

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

JAMES A. BATTLE, JR.,	)	
	)	
Plaintiff,	)	CASE NO. C10-5410-RSM-MAT
	)	
v.	)	
	)	ORDER ADOPTING REPORT AND
DAVID HAYNES, <i>et al.</i> ,	)	RECOMMENDATION
	)	
Defendants.	)	
_____	)	

This matter comes before the Court upon Defendants' Objections to the Report and Recommendation of the Honorable Mary Alice Theiler, United States Magistrate Judge (Dkt. #41). For the reasons set forth below, the Court adopts the Report and Recommendation ("R&R"), dismissing Plaintiff's complaint with respect to Defendant David Haynes, denying dismissal of Plaintiff's complaint with respect to Defendants Alan Baalaer and Josh Vivet, and striking the remaining motions from the calendar.

Plaintiff proceeds *pro se* and *in forma pauperis*. On October 14, 2010, Defendants moved to dismiss Plaintiff's complaint on the basis of the claim splitting doctrine (Dkt. #27). Defendants argued that the instant action was duplicative of Plaintiff's earlier filed action,

01 *Battle v. Haynes*, C09-818-RAJ. See *Adams v. California Department of Health Service*, 487  
02 F.3d 684 (9th Cir. 2007). While acknowledging that it was “admittedly a close call,” Judge  
03 Theiler concluded that “the two actions do not arise out of the same transactional nucleus of  
04 facts and that they are not the same for purposes of the duplicative action test with respect to  
05 defendants Baalaer and Vivet.” Dkt. #40 at 12. Concluding that the claim splitting doctrine  
06 did apply to Defendant Haynes, Judge Theiler recommended dismissal Defendant Haynes from  
07 the action.

08 Defendants filed Objections to Judge Theiler’s R&R, in which they argued that the  
09 R&R did not take into account the analogous nature of *Adams v. California* and the case at bar;  
10 did not appropriately apply the authority of *Adams*; did not apply the proper weight to the  
11 fourth factor of the transaction test – whether the suit arises out of the same transactional  
12 nucleus of facts; failed to acknowledge the fact that Plaintiff could have and should have  
13 brought claims against Officers Baalaer and Vivet in his first suit; and failed to take into  
14 account the costs of piecemeal litigation. Dkt. #41. Plaintiff filed a Response to Defendants’  
15 Objections in which he did not challenge Judge Theiler’s R&R. Dkt. #44. Plaintiff additionally  
16 requests that Defendants’ Objections be stricken for failure to properly serve Plaintiff. *Id.*

17 With respect to service, the Court notes Plaintiff’s objections to Defendants’ service of  
18 process and admonishes Defendants to ensure that, in the future, all motions are properly served  
19 upon the Plaintiff according to the Local Rules and Federal Rules of Civil Procedure.  
20 However, because Defendants did not have the opportunity to respond to Plaintiff’s request that  
21 the Objections be stricken on the basis of improper service, the Court DENIES Plaintiff’s  
22 motion to strike Defendants’ Objections.

01 The Court now turns to Defendants' Objections. When reviewing a Magistrate Judge's  
02 Report and Recommendation, this Court "must make a de novo determination of those portions  
03 of the report ... to which objection is made," and "may accept, reject, or modify, in whole or in  
04 part, the findings or recommendations made by the Magistrate." 28 U.S.C. § 636(b)(1)(C); see  
05 also *Baxter v. Sullivan*, 923 F.2d 1391, 1394 (9th Cir.1991) (citing *Britt v. Simi Valley Unified*  
06 *Sch. Dist.*, 708 F.2d 452, 454 (9th Cir.1983)). In addition, courts liberally construe pleadings  
07 of *pro se* litigants, see *Eldridge v. Block*, 832 F.2d 1132, 1137 (9th Cir. 1987), and seek to avoid  
08 denying *pro se* litigants a hearing on the merits due to ignorance of procedural technicalities,  
09 see *Balistreri v. Pacifica Police Dep't*, 901 F.2d 696, 699 (9th Cir. 1990).

10 With respect to Defendants' contention that the R&R did not account for the analogous  
11 procedural history of this case and that of *Adams*, the Court notes that the two cases, while  
12 similar in many respects, are also crucially dissimilar. The Plaintiff in *Adams* sought to amend  
13 her complaint to add additional defendants well after the discovery deadline had passed. 487  
14 F. 3d at 687. Upon being denied leave to amend on the basis that it would be prejudicial to the  
15 defendants at such a late date, the *Adams* plaintiff then filed a new lawsuit in which she named  
16 additional defendants and added additional causes of action. *Id.* In contrast, the Plaintiff here  
17 sought leave to amend his complaint well before the discovery cut-off. He was denied leave  
18 because he failed to file a motion requesting leave to file his amended complaint. He was  
19 instructed to file a motion for leave to amend. Instead, he filed a second lawsuit in which he  
20 named new defendants and asserted new causes of action. The second lawsuit in this case,  
21 unlike the second lawsuit in *Adams*, was also filed before the discovery cutoff in the first case.  
22 Therefore, while the severe sanction of dismissal with prejudice was held to be appropriate in

01 *Adams*, there are sufficient procedural differences between this case and *Adams* to warrant a  
02 concomitantly different outcome. Furthermore, Defendants may address their concerns  
03 regarding the cost of piecemeal litigation through other means, including a motion for  
04 consolidation.

05 In sum, having reviewed plaintiff's complaint, defendants' motion to dismiss,  
06 plaintiff's motion to amend his complaint, plaintiff's motion for partial summary judgment,  
07 plaintiff's "motion" objecting to defendants' request for a continuance of plaintiff's summary  
08 judgment motion, the Report and Recommendation of the Honorable Mary Alice Theiler,  
09 United States Magistrate Judge, Defendants' Objections to the R&R, Plaintiff's Response  
10 thereto, and the remaining record, the Court agrees with Judge Theiler that whether the case  
11 should be dismissed under *Adams* the claim splitting doctrine is a close call. However, Judge  
12 Theiler's analysis is thorough and consistent with Ninth Circuit precedent.

13 The Court does hereby ORDER:

14 (1) The Court adopts the Report and Recommendation (Dkt. #40);

15 (2) Defendants motion to dismiss (Dkt.#27) is GRANTED with respect to  
16 defendant David Haynes and DENIED with respect to defendants Alan Baalaer and Josh Vivet;

17 (3) Plaintiff's motion to amend his complaint (Dkt.#35), plaintiff's motion for  
18 partial summary judgment (Dkt. #31), and plaintiff's "motion" objecting to defendants' request  
19 for a continuance of plaintiff's summary judgment motion (Dkt. #37) are STRICKEN;

20 (4) Plaintiff's request that defendant's Objections be stricken (Dkt.#44) is  
21 DENIED;

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02 (5) The Clerk is directed to send copies of this Order to plaintiff, to counsel for  
03 defendants, and to the Honorable Mary Alice Theiler.

04 DATED this 25<sup>th</sup> day of March 2011.

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07 RICARDO S. MARTINEZ  
08 UNITED STATES DISTRICT JUDGE  
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